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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 600

KEZIAH REED, GEORGIANA R. SIMPSON, LILLIAN M. H. REDDING, INFANT, BY HER NEXT FRIEND, LEWIS H. REDDING; MARGARET M. REDDING, INFANT, BY HER NEXT FRIEND, LEWIS H. REDDING, ET AL., PETITIONERS,

vs.

LORENZO ALLEN.

BRIEF FOR THE PETITIONERS.

J. WILMER LATIMER,
Guardian ad Litem for Infant Petitioners, in Propria Persona,
WALTER C. CLEPHANE,
GILBERT L. HALL,
Counsel for Adult Petitioners.

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vs.

LORENZO ALLEN.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE PETITIONERS.

Opinion Below.

The opinion of the Court of Appeals will be found at pages 22 to 25 of the record. Thus far it has been reported only in 60 Wash. Law Rep., at page 36.

Jurisdiction.

The judgment of the Court of Appeals was entered December 7, 1931 (R. 25). The petition for writ of certiorari was filed December 29, 1931, and was granted January 25, 1932 (R. 26). The jurisdiction of this Court rests upon Section 240 (*a*) of the Judicial Code as amended by the Act of February 13, 1925.

The grounds upon which this Court's jurisdiction was invoked (Petition, p. 5) are:

1. That the Court of Appeals has decided erroneously a question of great and general importance.

2. That said decision, if permitted to stand as a precedent, will unsettle and tend to destroy long-established law with respect to the conclusiveness of judgments.

3. That the Court of Appeals has not given effect to, but has wholly ignored, applicable decisions of this Court relating to the doctrine of *res judicata*.

Question Presented.

Whether a final judgment in ejectment constitutes a bar, under the statute in force in the District of Columbia, to the prosecution of a later action of ejectment between the same parties involving the same issue.

Statute Involved.

The statute involved is Sec. 1002 of the Code of Law of the District of Columbia, quoted at page 6, *infra*.

Statement of the Case.

In an action of ejectment, brought by respondent against petitioners,* the Supreme Court of the District gave judgment against respondent (R. 20) on the ground that the action was barred by a previous judgment in ejectment, between the same parties, in favor of the petitioners (R. 18). The Court of Appeals, however, held that the previous judgment was *not* a bar (R. 22-25), and accordingly reversed the decision (R. 25). It is this judgment of the Court of Appeals which is now to be reviewed. From the previous judgment in ejectment *no appeal was taken* (R. 6, 23); and petitioners were put into possession of the land there (and here) involved under the appropriate writ (R. 15). They have remained in possession ever since (R. 6, 7).

The facts of the instant case are presented by the pleadings. To the declaration (R. 1, 2) the defendants (petitioners here) pleaded the former proceedings and judgment (R. 5, 6). The plaintiff (respondent here) replied certain facts (R. 8-16), and the defendants demurred (R. 17, 18). The demurrer having been sustained in the trial court (R. 18, 19), the plaintiff elected to stand on his replication (R. 20).

The facts set up in the replication (R. 8-16) are, in substance: that, before the first action in ejectment, a

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* Suit was started against petitioners' tenant, but petitioners were promptly substituted as defendants, under Sec. 984, D. C. Code (R. 4, 5).

bill of interpleader had been filed by one Walker as plaintiff against the petitioners, on the one hand, and the respondent, on the other, as defendants making adverse claims to certain moneys in his hands, being rents out of the land later involved in the two ejectment suits (R. 12); that the defendants were required to interplead (R. 9) and each party claimed the rent moneys as owner of the land under a certain will mentioned below; that in the trial court the petitioners had a decree (R. 9, 10), but in the Court of Appeals the respondent was held entitled to said moneys as heir at law (R. 15), and a mandate was sent down accordingly (R. 15); that the first action of ejectment was begun (R. 5) and concluded (R. 6) after the decree in the lower court (R. 10) and before the judgment in the upper court (R. 15).

The will above referred to was that of one Silas Holmes who died prior to 1898 (R. 12), seized and possessed of the real estate in question. He devised it to certain life tenants (R. 11, 12), and, following the death of the last of these, the controversies arose between petitioners and respondent which resulted in the suits above described (R. 12-16).

Although it is believed that the above statement is sufficient to present the only question of law involved, yet in the interest of perfect clearness the essential events in the three suits are here mentioned in chronological order:

July, 1925.—Decree in trial court in petitioners' favor in interpleader suit involving rents; appeal noted and perfected (R. 9, 10).

June, 1926.—Ejectment for possession of real estate instituted by petitioners against respondent (R. 5).

August, 1926.—Judgment for petitioners in ejectment action. *No appeal taken* (R. 6, 23).

August, 1926.—Possession of real estate delivered to petitioners under writ of possession in ejectment suit (R. 15).

January, 1927.—Decision of Court of Appeals reversing decree in interpleader suit (R. 15).

May, 1927.—Decree upon mandate of Court of Appeals in interpleader suit (R. 15, 16).

December, 1927.—Ejectment (second action) for possession of same real estate, instituted by respondent (R. 1).

April, 1930.—Judgment for petitioners in second ejectment suit; appeal noted and perfected (R. 20).

December, 1931.—Decision of Court of Appeals reversing judgment in second ejectment suit (R. 22-25).

Grounds of Appellate Court's Decision.

Upon a careful reading of the opinion of the Court of Appeals (R. 22-25) it is difficult to say what, exactly, is the real ground of the decision, but it would appear to be, primarily, that the judgment of that court in the interpleader suit constituted a new title to the land in the respondent, and, secondarily, that the judgment in the first ejectment action, *although not appealed from*, could not be a final judgment until the Court of Appeals had passed upon the same question of law in the collateral interpleader suit. An analysis of the opinion will be found at pages 13 to 17, *infra*.

Specification of Error.

The Court of Appeals erred in holding that the judgment in petitioners' favor in the first ejectment suit did not constitute a bar to the prosecution by respondent of the second ejectment suit.

ARGUMENT.

The common law doctrine which permitted successive ejectment actions between the same parties involving the same issue has been abrogated by the following provision of the D. C. Code:

> "Any final judgment rendered in an action of ejectment shall be conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action" (Section 1002).

Of a similar statute this Court said, in *Barrows* v. *Kindred*, 4 Wall. 399:

> "When the Legislature of any State has seen fit to divest the action of ejectment of its ancient characteristics, and to place it upon the same footing with other actions, we have not failed to give full effect to the legislative intent by maintaining the conclusiveness of the judgment, as in other cases." (p. 403)

In the present case the Court of Appeals has declared a final judgment in ejectment to be of no effect, notwithstanding the plain terms of the above statute and the applicable decisions of this Court hereinafter

cited. The reasons given in the appellate court's opinion. (R. 22-25) are presently to be adverted to (*infra.* pp. 13 to 17).

Whenever this Court has had occasion to speak of the estoppel by judgment, it has spoken in no uncertain terms. Brief quotations from a few illustrative cases follow:

Johnson Co. v. *Wharton,* 152 U. S. 252:

> "The object in establishing judicial tribunals is that controversies between parties, which may be the subject of litigation, shall be finally determined. The peace and order of society demand that matters distinctly put in issue and determined by a court of competent jurisdiction as to parties and subject-matter, shall not be retried between the same parties in any subsequent suit in any court. The exceptions to this rule that are recognized in cases of judgments obtained by fraud or collusion have no application to the present suit" (p. 257). * * *
>
> "The inquiry as to the conclusiveness of a judgment in a prior suit between the same parties can only be whether the court rendering such judgment—whatever the nature of the question decided, or the value of the matter in dispute—had jurisdiction of the parties and the subject-matter, and whether the question, sought to be raised in the subsequent suit, was covered by the pleadings and actually determined in the former suit." (p. 261)

Southern Pacific R. R. Co. v. *U. S.,* 168 U. S. 1:

> "The general principle announced in numerous cases is that a right, question or fact dis-

> tinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; (p. 48) * * * This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them." (p. 49)

Fayerweather v. *Ritch*, 195 U. S. 276:

> "Private right and public welfare unite in demanding that a question once adjudicated by a court of competent jurisdiction shall, except in *direct proceedings to review*, be considered as finally settled and conclusive upon the parties." (p. 299) (Italics supplied.)

Hart Steel Co. v. *Railroad Supply Co.*, 244 U. S. 294:

> "This doctrine of *res judicata* is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts to the end that rights once established by the final judgment of a court of competent jurisdiction

> shall be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect." (p. 299)

A very recent expression of this Court upon the subject is in *Baldwin* v. *Iowa State Traveling Men's Association*, 283 U. S. 522, where the facts were that a corporation, sued in the United States District Court of Missouri, had entered a special appearance and moved to dismiss on the ground of the lack of jurisdiction of that court over the person of the defendant. Its motion was overruled and, upon failure to plead, judgment was entered against it. The corporation sought no review of the judgment. Later, suit upon the judgment was brought in the United States District Court of Iowa, and the corporation there pleaded the invalidity of the judgment on the same ground advanced in the former suit—lack of jurisdiction of the District Court of Missouri over the person of the defendant. This Court held that the corporation was estopped by the former judgment, which became final by its failure to move to set it aside or to sue out a writ of error, and said:

> "It elected to follow neither of those courses, but, after having been defeated upon full hearing in its contention as to jurisdiction, it took no further steps, and the judgment in question resulted.
>
> "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in

> every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause." (pp. 525, 526)

The appellate court's interpretation of the Silas Holmes will, in the interpleader suit (R. 15), was not handed down for many months after the first ejectment judgment had been entered and petitioners put in possession (R. 15). The present decision of the Court of Appeals is that, notwithstanding the acquiescence of respondent in the judgment in the first ejectment suit, he is nevertheless *not bound* by it, but may maintain this second ejectment suit because of that intervening ruling of the Court of Appeals in the interpleader suit. In other words, when (through the appellate court's subsequent ruling in a wholly collateral suit) it appears that a final judgment in ejectment, unappealed from and acquiesced in, had been erroneous, the losing party may again litigate the same issue with the same parties in a second ejectment action.

Tested by this later interpretation it may be admitted that the ejectment judgment was erroneous. But that does not at all affect its finality and conclusiveness. As this Court said in *State of Oklahoma* v. *State of Texas*, 256 U. S. 70:

> "The matter being *res judicata*, as the result of the decree in the former suit, it is of no consequence whether it was correctly decided or not." (p. 93)

It is not necessary to cite decisions of other courts to the effect that the failure to assert rights in a suit in which a judgment is obtained, either through ignorance of law or of facts, or through negligence or misconduct of counsel, does not affect the estoppel, and that, so long as the judgment remains unappealed from and in full force, the fact that it may have been erroneous does not detract from its effect as a bar to further suits upon the same cause of action.

The opinion in *Oklahoma* v. *Texas, supra,* and the following quotations from other cases in this Court make the above principles clear.

In *Wilson's Executor* v. *Deen,* 121 U. S. 525, which is quite in point on the facts, the Court said:

> "Fraud in procuring the lease, upon which this action is brought, was the point in issue in the action in the Marine Court between the same parties, and it having been found by the verdict of the jury against the plaintiff, and judgment having been rendered upon that finding, the fact thus established must necessarily defeat any subsequent action upon the same instrument between those parties. *The effect of the judgment is not at all dependent upon the correctness of the verdict or finding upon which it was rendered. It not being set aside by subsequent proceedings, by appeal or otherwise, it was equally effective as an estoppel upon the point decided, whether the decision was right or wrong* * * *".
> (p. 534). (Italics supplied.)

In *Cromwell* v. *County of Sac,* 94 U. S. 351, frequently cited in later decisions of this Court, the opinion, after stating the rule that a judgment rendered

upon the merits constitutes an absolute bar to a subsequent action, continues:

> "It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and of the amount due upon it, *although it be subsequently alleged that perfect defenses actually existed,* of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. *The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed*" (pp. 252, 253). (Italics supplied.)

In *U. S.* v. *Moser*, 266 U. S. 236, the Court said:

> "But a *fact, question* or *right* distinctly adjudged in the original action cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or by an erroneous application of the law" (p. 242). (Italics the Court's.)

To same effect:

Elliott v. *Lessee of Peirsol*, 1 Pet. 328, at p. 340.
Chicago, R. I. & P. R. Co. v. *Schendel*, 270 U. S. 611, at p. 617.

So important is the maintenance of the doctrine of *res judicata* that this Court has declared that it must be enforced even when no review of the judgment by appeal was available, because of the small amount involved (*Johnson Co.* v. *Wharton*, 152 U. S. 252).

Brief references will be made now to the grounds stated in the opinion of the Court of Appeals for its ruling in the present case.

1. Strangely, the appellate court treats the appeal from the decree in the collateral (interpleader) suit as if it had been an appeal from the judgment in the first action of ejectment, and bases its conclusion upon this supposed fact. It said in its opinion, after quoting the Code section in question (*supra*, p. 6):

> "It will be observed that this relates to final judgments. *A judgment appealed from is not a final judgment.* It is merely an adjudication of the inferior court, the finality of which depends upon the action of the superior court" (R. 24). (Italics ours.)

Any reader of the opinion (R. 22-25) would almost certainly infer from this that there had been an appeal from the first ejectment judgment. But it has already been shown by the record that *there was no appeal taken* (R. 6, 23).

2. The appellate court falls into the further error of treating the decree in the interpleader suit as a *decree vesting title* to the real estate.

That the interpleader decree *did not* create or vest title to the real estate is obvious. The only possible

authority of the court in the interpleader suit was to determine who was entitled to the money in Walker's hands. This involved the interpretation of Silas Holmes' will for the purpose of ascertaining in whom was the title in remainder, for such remainderman was clearly entitled to rent-money collected by Walker after the life tenant's death. The trial court's construction of the will gave the money to petitioners as devisees under the will (R. 9, 10). The appellate court's construction gave it to respondent Allen as heir-at-law (R. 15). *In either view the title to the land must have vested at the testator's death* (which occurred about 30 years before—R. 12) or as soon after his death as the claimants came into being. Therefore the equity court *could not have vested title to the land by its decree* in the interpleader suit, and the fact is that neither the first decree (R. 9, 10) nor the decree upon mandate (R. 15, 16) attempted to do so.

It is thus made evident that the appellate court was entirely in error in declaring the fact to be that

> "The judgment in the first ejectment proceeding was *dependent entirely upon the title acquired through the decree* of the Supreme Court of the District of Columbia" (R. 24). (Italics ours.)

3. The third fundamental error of the appellate court is closely related to the second. It is that the appellate court predicated its decision upon the unjustified premise that petitioners had *based their ejectment action upon the trial court's decree* in the interpleader suit. The opinion, in stating the case, says

(R. 23) that petitioners "instituted an action in ejectment against the appellant *wholly based on the decree* then on appeal." (Italics ours.) Throughout the opinion are other frequent references to the same supposed fact, and it is plain from the court's language that it regarded such supposed fact as a controlling one.

But the record shows that petitioners' ejectment action was based, as of course it must have been, upon the title which they had long asserted *as devisees under the Silas Holmes will* (R. 8, 9). Manifestly the judgment therein could not have been based, nor in any way dependent, upon a decree which vested *no title to the real estate in them.* Respondent's replication in the present action (upon which he elected to stand after demurrer was sustained) avers that in the former ejectment action, petitioners "as their source of title and right to possession relied solely" upon Silas Holmes' will, and upon the trial court's decree in the interpleader suit (R. 8, 9). This is the only statement in the record upon this subject and it shows that the present petitioners there asserted and relied upon a *title derived from the will* and very properly availed themselves of the interpretation given the same will by a justice of the same court in a collateral proceeding in which the will had also been involved. *But even if petitioners in that action had erroneously relied upon the trial court's decree in the collateral suit, as their source of title, respondent could not by a second action in ejectment attack the erroneous judgment from which he omitted to appeal.*

4. The appellate court further, in its opinion, says that:

> "The first ejectment suit was merely *in aid of the first decree*" (R. 24, 25). (Italics ours.)

and

> "When that decree was reversed, 'vacated, set aside, and for nothing held,' the judgment for possession shared the fate of the decree upon which reliance was placed for title" (R. 25).

It is impossible to find any justification either in the record or in the law for declaring that this common law action of ejectment was or could have been in aid of the decree for the payment of money in the interpleader suit.

5. The appellate court's opinion concludes thus:

> "It was within the power of the equity court upon the mandate of this court, to have ordered restitution of possession in its decree. Possessing this power, it would be trifling with justice to hold that the court was without power to grant restitution in ejectment" (R. 25).

But, it may be asked, what possible power or jurisdiction had the equity court, in the collateral interpleader suit over money, to enter any order or decree which could disturb the final judgment entered long before by the law court in ejectment, or the possession of the real estate which had been secured by that judgment? Of course, upon the reversal of the equity decree, the trial court could and would have required

the prevailing parties below to surrender the money, which alone was the subject of that suit, had such money been paid to them pending the appeal.

The Court of Appeals in its opinion cites, as authorities for its conclusion, the following *four cases only: Golde Clothes Shop* v. *Loews Buffalo Theater,* 236 N. Y. 465, 470; *Ure* v. *Ure,* 223 Ill. 454; *Dodson* v. *Butler,* 101 Ark. 416, 420; *U. S.* (meaning Bank of U. S.) v. *Bank of Washington,* 6 Pet. 8, 17. Counsel deem it unnecessary to protract this brief by referring to the facts and conclusions in those cases, because a cusory examination will disclose that none of them is at all in point upon the facts or the law of the present case.

As indicated by the foregoing quotations from the opinion of the Court of Appeals, it wholly ignored the distinct nature of the remedies invoked in the ejectment action and the interpleader proceeding, respectively, and the exclusive character of the jurisdiction in such cases. Because in both it happened that the interpretation of the same will was involved, the appellate court fell into the fundamental error of treating the judgment in the one case as dependent upon the decree in the other. The following apt language of this Court in *Buck* v. *Colbath,* 3 Wall. 334, which was directly called to the appellate court's attention in petitioners' brief there, should have prevented any such confusion:

> "It is not true that a court, having obtained jurisdiction of a subject matter of a suit, and of parties before it, thereby excludes all other courts from the right to adjudicate upon other

matters having a very close connection with those before the first court, and, in some instances, *requiring the decision of the same questions exactly.*

"In examining into the exclusive character of the jurisdiction of such cases, we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits.

"For example, a party having notes secured by a mortgage on real estate, may, unless restrained by statute, sue in a court of chancery to foreclose his mortgage, and in a court of law to recover a judgment on his notes, and in another court of law in an action of ejectment to get possession of the land. Here in all the suits the only question at issue may be the existence of the debt mentioned in the notes and mortgage; *but as the relief sought is different, and the mode of proceeding is different, the jurisdiction of neither court is affected by the proceeding in the other*" (pp. 345, 346). (Italics supplied.)

See also *Watson* v. *Jones*, 13 Wall. 679, at page 716.

The only ground upon which respondent sought to avoid the bar of the former judgment was that he had *acquired a new title* since the first ejectment judgment *by virtue of the decree upon mandate of the appellate court in the interpleader suit.* (See Op. Ct. of Ap., R. 23.) The learned *trial* justice in his memorandum opinion rejected this contention, saying:

"I do not think that the plaintiff sets up any title in the present suit acquired since the former suit. * * * He failed to appeal from the former

judgment and cannot now set up any title which he had at that time'' (R. 18).

With that conclusion the appellate court disagreed, holding that the decree upon its mandate in the interpleader suit over the rent money *constituted a new title* to the real estate in Allen. It has already been shown that such could not have been the effect of said decree, and reference to its terms (R. 15, 16) will show clearly that it *did not attempt to vest or create title to the land in anyone.*

To further test the main question here involved, suppose petitioners' ejectment action had been instituted after (instead of long before) the ruling by the Court of Appeals in the interpleader suit, and that the trial court had erroneously given judgment for petitioners notwithstanding that ruling, what would have been respondent's remedy? Obviously his only remedy would have been an appeal from that judgment. He could not acquiesce therein and later on institute a second ejectment suit because of the error in entering the prior judgment.

The case made by the record comes simply to this: Respondent had his day in court in the first ejectment action. He had a plain legal remedy by appeal from the adverse final judgment therein and omitted to avail himself of it. By the present decision the Court of Appeals has given him a remedy which is opposed to settled principles repeatedly declared by this Court, as well as to the terms of an unambiguous statute.

If we are not mistaken in our view that the decision is wrong, that it contradicts the plainest decisions of

this Court, and that it tends to weaken if not to destroy one of the fundamentals of the law, then the fact that the decision was by a unanimous court only makes the situation the more serious.

Conclusion.

It is respectfully submitted that the decision and judgment of the Court of Appeals should be reversed.

J. WILMER LATIMER,
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